

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2319 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE PRADIP KUMAR SARKAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

TIP TOP READYMADE STORES

Versus

REGIONAL PROVIDENT FUND COMMISSIONER

Appearance:

MR KV SHELAT for Petitioners

MR BB NAIK for Respondent No. 1

Ms. B.R. Gajjar, Ld.GOV'T PLEADER for Respondent No. 2

CORAM : MR.JUSTICE PRADIP KUMAR SARKAR

Date of decision: 06/04/2000

ORAL JUDGEMENT

Heard learned counsel Mr. K.V. Shelat for the petitioners, and Ms. B.R. Gajjar, learned AGP for respondent State.

The P.F. Commissioner issued a notice on 12-5-1986 to the petitioner that they are covered under

the Employees P.F. & Misc. Provisions Act, 1952 and since the employer's contribution has not been paid, the P.F. Commissioner by its letter dated 27-2-87 requested the Collector of Ahmedabad for realisation of the dues of P.F. amount from the petitioners. It is submitted by learned counsel for the petitioners that the P.F. Commissioner decided that both the petitioner firms should be taken as a single unit and the P.F. & Misc. Provisions Act, 1952 will apply to the establishments of the petitioners. The petitioners on various dates submitted representations to the Regional P.F. Commissioner stating that, both the firms cannot be taken as one unit and number of employees does not exceed 20 at any point of time, and therefore the provisions of P.F. Act shall not apply in case of the petitioners establishments. However the P.F. Commissioner without making any inquiry determined the amount due from the petitioner firms and has written letter to the Collector of Ahmedabad on 27-2-1987 (Annexure-J) requesting him to collect the P.F. dues from the petitioners firms.

Learned counsel submitted that, when a question is raised whether the provisions of the aforesaid Act will apply to a particular establishment or not, it is obligatory on the part of the P.F. Commissioner or any person authorised under section 7-A of the said Act to make an inquiry to decide the said question as such. It is also submitted by learned counsel that, according to sub section (3) of Section 7-A of the Act, it is obligatory on the part of the authority to pass an order after hearing the parties. Learned counsel for the petitioners further submitted that, no inquiry has been held under section 7-A of the Act and no decision has been taken by the authority whether the Act will apply in case of the petitioners firms. Learned counsel therefore submitted that the P.F. Commissioner has illegally and erroneously wrote the letter to the Collector for realisation of the P.F. dues from the petitioners. Learned counsel consequently submitted that the letter of the P.F. Commissioner at Annexure-J should be quashed.

None appears for the respondent P.F. Commissioner. No counter affidavit has also been filed by the respondent. In absence of any such counter affidavit on record, it would be difficult to ascertain whether the inquiry under Section 7-A has been conducted by the Commissioner or any authorised person as mentioned in Section 7-A of the Act. Since no papers/documents are available to show that an inquiry has been made under Section 7-A of the Act, I am of the view that the P.F. Commissioner or the person authorised under the Act to

determine whether the petitioner firms will come under the ambit of Employees P.F. & Misc. Provisions Act 1951. When the question has been raised repeatedly by the petitioners I am of the view, it is obligatory on the part of the authority to decide this question first and then to proceed further against the petitioner firms. Since there is no papers/documents to show that this question has been decided, I am of the view that the notice at Annexure-J requesting the Collector, Ahmedabad to recover amount from the petitioners should be quashed. Accordingly the order of the P.F. Commissioner in its letter dated 27-2-1987 is cancelled. This petition is accordingly allowed. Rule made absolute to the aforesaid extent. However in the facts and circumstances of the case, I make no order as to costs.

Dt: 6-4-2000

(P.K. Sarkar, J)